

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

CHARLES IZAC,

Petitioner,

v.

CIVIL ACTION NO. 5:12-cv-00613

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION AND ORDER
ADOPTING PROPOSED FINDINGS AND RECOMMENDATION**

The Court has reviewed the Petitioner's March 1, 2012 *Motion Under 28 U.S.C. § 2241* for a Writ of Habeas Corpus by a person in state or federal custody (Document 1), wherein Petitioner asserts that he is "actually innocent" of the Armed Career Offender Enhancement applied in his one hundred eighty month term of imprisonment.


By *Standing Order* (Document 2) entered on March 1, 2012, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On May 21, 2012, the Magistrate Judge submitted *Proposed Findings and Recommendation* (Document 4) wherein it is recommended that this Court grant Petitioner's May 16, 2012 *Motion to Remove 28 U.S.C. § 2241* (Document 3), dismiss Petitioner's Section 2241 Application without prejudice, and remove this matter from the Court's docket. A review of Petitioner's motion to remove reveals that he moves, without explanation, "to strike from the Docket motion filed under 28 U.S.C. [§] 2241 arguing Illegal Restraint pursuant to the Actual Innocence Clause." (Document 3 at 1.)

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In his PF&R, Magistrate Judge VanDervort advised the parties that any objections to the PF&R were due within seventeen (17) days of the filing of the proposed findings and recommendation. Consequently, any objections to the PF&R were due on June 7, 2012. To date, no party has filed any objections to the Magistrate Judge's Proposed Findings and Recommendation.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the Proposed Findings and Recommendation, and **ORDERS** that Petitioner's Motion to Remove 28 U.S.C. § 2241 (Document 3) be **GRANTED**, Petitioner's Motion Under 28 U.S.C. § 2241 (Document 1) be **DISMISSED WITHOUT PREJUDICE**, and that this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: June 14, 2012


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA